

ESTTA Tracking number: **ESTTA342535**

Filing date: **04/15/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91191603
Party	Defendant UnitedHealth Group Incorporated
Correspondence Address	Richard J. Groos Fulbright & Jaworski L.L.P. 600 Congress Avenue, Suite 2400 Austin, TX 78701 UNITED STATES aotrademark@fulbright.com, rgroos@fulbright.com, acallahan@fulbright.com, bress@fulbright.com, kpfertner@fulbright.com
Submission	Answer
Filer's Name	Brandon M. Ress
Filer's e-mail	aotrademark@fulbright.com, bress@fulbright.com, rgroos@fulbright.com, acallahan@fulbright.com, kpfertner@fulbright.com
Signature	/Brandon M. Ress/
Date	04/15/2010
Attachments	Answer 91191603 ESAVER.pdf (4 pages)(95858 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Optima Health Plan,	§	
	§	
Opposer,	§	
	§	
v.	§	Opposition No. <u>91191603</u>
	§	
UnitedHealth Group Incorporated,	§	Serial No. 77/298,340
	§	
Applicant.	§	

ANSWER TO NOTICE OF OPPOSITION

Pursuant to Federal Rule of Civil Procedure 8(b) and Trademark Rule 2.106, Applicant UnitedHealth Group Incorporated ("Applicant") answers the Notice of Opposition filed by Optima Health Plan ("Opposer"). The paragraph numbers below correspond to those in the Notice of Opposition. Applicant reserves the right to amend or supplement this Answer as appropriate.

I. ANSWER

1. Applicant admits the allegations in Paragraph 1 of the Notice of Opposition.
2. Applicant admits the allegations in Paragraph 2 of the Notice of Opposition.
3. Applicant admits the allegations in Paragraph 3 of the Notice of Opposition.
4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4 of the Notice of Opposition.
5. Applicant admits that public records indicate that OPTIMA HEALTH & Design was registered on May 15, 2007 and was accorded Registration No. 3,241,964. Applicant further admits that the document attached as Exhibit A to the Notice of Opposition appears to relate to

Registration No. 3,241,964. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 5 of the Notice of Opposition.

6. Applicant admits that public records indicate that OPTIMA was registered on January 10, 2006 and was accorded Registration No. 3,039,852. Applicant further admits that the document attached as Exhibit B to the Notice of Opposition appears to relate to Registration No. 3,039,852. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 6 of the Notice of Opposition.

7. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7 of the Notice of Opposition.

8. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8 of the Notice of Opposition.

9. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9 of the Notice of Opposition.

10. Applicant admits the allegations in Paragraph 10 of the Notice of Opposition.

11. Applicant admits that its application lists services in International Class 36 and Registration Nos. 3,241,964 and 3,039,852 list services in International Class 36. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 11 of the Notice of Opposition.

12. Applicant admits that it had constructive knowledge of Registration Nos. 3,241,964 and 3,039,852 prior to filing the application at issue. Applicant denies the remaining allegations in Paragraph 12 of the Notice of Opposition.

13. Applicant denies the allegations in Paragraph 13 of the Notice of Opposition.

14. Applicant admits that it has not sought Opposer's consent to use the OPTUMHEALTH ESAVER mark. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 14 of the Notice of Opposition.

15. Applicant denies the allegations in Paragraph 15 of the Notice of Opposition.

16. Applicant admits that it will have the exclusive right to use the OPTUMHEALTH ESAVER mark upon registration. Applicant denies the remaining allegations in Paragraph 16 of the Notice of Opposition.

17. To the extent any averment in the Notice of Opposition is not specifically admitted herein, any such averment is denied.

II. DEFENSES AND AFFIRMATIVE DEFENSES

1. Opposer's claims are barred in whole or in part by laches, acquiescence, estoppel, and waiver.

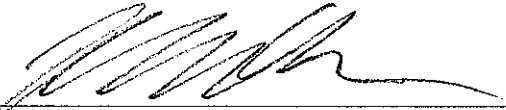
2. There is no likelihood of confusion, mistake, or deception because, *inter alia*, any rights that Opposer may have are weak and must be narrowly circumscribed.

3. There is no likelihood of confusion, mistake, or deception because, *inter alia*, Applicant's mark and the pleaded marks of Opposer are not confusingly similar.

Wherefore, Applicant requests that the Notice of Opposition be rejected, that judgment be entered in favor of Applicant, and for all other relief to which it is justly entitled.

DATED: April 15, 2010

Respectfully submitted,

By 

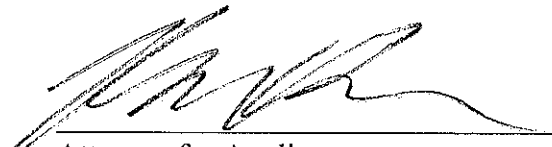
Richard J. Groos
C. Ashley Callahan
Brandon M. Ress
FULBRIGHT & JAWORSKI L.L.P.
600 Congress Avenue, Suite 2400
Austin, TX 78701-3248
Telephone: (512) 474-5201
Facsimile: (512) 536-4598

ATTORNEYS FOR APPLICANT

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was served by first class mail on April 15, 2010 upon Opposer's attorney at the following address:

Craig L. Mytelka
William R. Poynter
Amy G. Marino
WILLIAMS MULLEN
222 Central Park Avenue, Suite 1700
Virginia Beach, Virginia 23462-3035


Attorney for Applicant